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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

Coordination Proceeding
Special Title (Rule 1550(b))

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4495

**GENERAL MOTORS
DEX-COOL/GASKET CASES**

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA
NO. HG03093843

Included actions:

Sadowski v. General Motors Corp.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN JOAQUIN
NO. CV 025 770

Bertino v. General Motors Corp.

**MASTER CLASS ACTION SETTLEMENT
AGREEMENT COVERING ALL STATES
EXCEPT THE STATE OF MISSOURI**

The Honorable Robert B. Freedman

Action filed: April 29, 2003
Trial date: None set

This Settlement Agreement (“Agreement” or “Settlement”) is entered into between the Representative Plaintiffs on behalf of themselves and the Class, and Defendant General Motors Corporation (“GM”), by and through their respective counsel or other designated signatory, in settlement and compromise of the Actions, as well as the Amico/Bertino Actions.

1. DEFINITIONS

1.1. “Actions” means the following lawsuits:

- (a) *Sadowski v. General Motors*, Case No. HG03091369 (Alameda County, California)
- (b) *Bowers v. General Motors*, Case No. 002590 (Philadelphia County, Pennsylvania)
- (c) *Brown v. General Motors*, Case No. 03-539 GPM (S.D. Ill.)
- (d) *Cherney v. General Motors*, Case No. 3113-03 (Albany County, New York)

1 (e) *Dalidowicz v. General Motors*, Case No. MID-L-3875-03 (Middlesex County, New
2 Jersey)

3 (f) *Dochwat v. General Motors*, Case No. 03-410-GPM (S.D. Ill.)

4 (g) *Flynn v. General Motors*, Case No.: 03-L-723 (Madison County, Illinois)

5 (h) *Longoria v. General Motors*, Case No. 03-03140-D (Nueces County, TX)

6 (i) *Strzalkowski v. General Motors*, Case No. 04-04740 (D. N.J.)

7 (j) *Sher Family Limited Partnership v. General Motors*, Case No. 06-00629 (E.D. Pa.)

8 (k) *Sullivan v. General Motors*, Case No. 07-00127 (W.D. N.C.)

9 (l) All actions consolidated as part of MDL No. 1562 and made part of the Second
10 Amended Consolidated Class Action Complaint in the MDL cases.

11 Nothing contained in the definition of “Actions” is intended to, or shall be deemed to, limit the scope of
12 the 49 state settlement or the release contained herein.

13 1.2. “Amico/Bertino Actions” means the following lawsuits: *Amico v. General Motors*, Case
14 No. 2004-092816 (Maricopa County, Arizona) and *Bertino v. General Motors*, Case No. CV025770
15 (San Joaquin County, California). Nothing contained in the definition of “Amico/Bertino Actions” is
16 intended to, or shall be deemed to, limit the scope of the 49 state settlement or the release contained
17 herein.

18 1.3. “Amico/Bertino Counsel” means Michael F. Ram of Levy, Ram & Olson LLP; John W.
19 Rasmussen of Johnson, Rasmussen, Robinson & Allen P.L.C.; Richard T. Dorman of Cunningham,
20 Bounds, Crowder, Brown & Breedlove, LLC; Mark S. Baumkel of Mark S. Baumkel & Associates;
21 and James Belford Brown of Herum Crabtree Brown.

22 1.4. “Claim” means a claim to receive a cash payment under subparagraphs 3.1 and/or 3.2. A
23 Claim consists of a Claim Statement, Proof of Expenditure, Proof of Ownership, and in the case of a
24 claim under subparagraph 3.2, Proof of Internal Leak Repair.

25 1.5. “Claimant” means a Class Member who submits a Claim.

26 1.6. “Claim Deadline” means 150 days after the first date on which notice of the Settlement is
27 disseminated to the Class in accordance with the Notice Order.

1 1.7. "Claim Statement" means a document substantially in the form of Exhibit A hereto,
2 which must be submitted by the Class Member, postmarked or received by the Claims Administrator,
3 by the Claim Deadline in order to obtain benefits under the Settlement, as described below.

4 1.8. "Claims Administrator" means Garden City Group, Inc. or such other entity to be
5 retained by General Motors, subject to approval by Co-Lead Counsel, to, among other things,
6 administer the Settlement and the claims process set forth in subparagraphs 3.1-3.8, below, including
7 receiving and processing claims, determining which claims are valid, assisting Class Members with the
8 completion and submission of claims, issuing and mailing Settlement payments, and ensuring that
9 claims fulfillment is properly implemented.

10 1.9. "Class" means all Consumers in the United States of America (excepting those who
11 purchased or leased a vehicle in the State of Missouri) who (i) own or lease, or who have owned or
12 leased, a Covered Vehicle that has been in service in excess of seven years, measured from the Date of
13 Initial Vehicle Delivery, at the time of the first date on which notice of the Settlement is disseminated
14 and who, at the time of the notice, had not incurred a repair expense of the type included in the
15 definition of Covered Repair, or (ii) own or lease, or who have owned or leased, a Covered Vehicle and
16 who incurred an expense for a Covered Repair before the first date on which notice of the Settlement is
17 disseminated to the Class in accordance with the Notice Order. Excluded from the Class are GM; any
18 affiliate, parent, or subsidiary of GM; any entity in which GM has a controlling interest; any officer,
19 director, or employee of GM; any successor or assign of GM; anyone employed by counsel for
20 Representative Plaintiffs; and any Judge to whom any of the Actions is assigned as well as his or her
21 immediate family.

22 1.10. "Class Counsel" means Co-Lead Counsel and the following counsel: Norman E. Siegel
23 of Stueve Siegel Hanson LLP; John M. Parisi of Shamberg Johnson & Bergman; Andrew N. Friedman
24 of Cohen Milstein, Hausfeld & Toll, PLLC; Ernest Cory of Cory Watson Crowder & Degaris PC; Joe
25 Whatley of Whatley Drake LLC; Lee S. Shalov of Shalov Stone Bonner & Rocco, LLP; William M.
26 Audet of Alexander, Hawes & Audet, LLP; Michael B. Marker of The Rex Carr Law Firm, LLC ;
27 Matthew H. Armstrong of Schlichter Bogard & Denton LLP; Murray Fogler of McDade Fogler Maines,
28 LLP; Jonathan Shub of Seeger Weiss LLP; Steven N. Berk of Chavez & Gertler LLP; Jonathan W.

1 Cuneo of Cuneo Gilbert & LaDuca, LLP; Michael D. Donovan of Donovan Searles, LLC; and Joel R.
2 Rhine and Christopher A. Chleborowicz of Lea Rhine Rosbrugh & Chleborowicz, PLLC.

3 1.11. “Class Member” means a member of the Class.

4 1.12. “Co-Lead Counsel” means Eric H. Gibbs of the law firm Girard Gibbs LLP, and P. John
5 Brady of the law firm Shughart Thomson & Kilroy P.C.

6 1.13. “Consumer” means a person who purchases or leases for personal, family, or household
7 use.

8 1.14. “Court,” unless specifically stated otherwise, means the Superior Court of the State of
9 California for the County of Alameda.

10 1.15. “Covered Repair” means any Engine Group A Repair, Engine Group B Repair, or Engine
11 Group C Repair.

12 1.16. “Covered Vehicle” means an Engine Group A Vehicle, Engine Group B Vehicle, or
13 Engine Group C Vehicle.

14 1.17. “Date of Initial Vehicle Delivery” means the date on which the original retail purchaser
15 or lessee took physical possession of the vehicle as reported by the delivering dealer.

16 1.18. “Effective Date” and/or “Effective Date of Settlement” means the latest of the following
17 dates: (i) if no appeal from the Judgment is filed, the date of expiration of the time for the filing or
18 noticing of any appeal from the Judgment; or (ii) if an appeal from the Judgment is filed, and the
19 Judgment is affirmed or the appeal dismissed, the date beyond which California Supreme Court review
20 is no longer available; or (iii) if the Court of Appeal issues a judgment affirming the Judgment or
21 dismissing the appeal (“Appellate Judgment”) and a petition for review of the Appellate Judgment is
22 filed and denied, the date beyond which United States Supreme Court review is no longer available; or
23 (iv) if a petition for review of the Appellate Judgment is filed and granted, or the California Supreme
24 Court orders review of the Appellate Judgment on its own motion, and the Appellate Judgment is
25 affirmed or the review proceeding dismissed, and no petition for a writ of certiorari with respect to the
26 Supreme Court’s judgment affirming the Appellate Judgment or dismissing the review proceeding
27 (“Review Judgment”) is filed, the date of expiration of the time for the filing of such a petition for a
28 writ of certiorari; or (v) if such a petition for a writ of certiorari is filed and denied, the date the petition

1 is denied; or (vi) if such a petition for a writ of certiorari is filed and granted, the date of final
2 affirmance of the Review Judgment or final dismissal of the review proceeding initiated by the petition
3 for a writ of certiorari. This Settlement shall not become Effective, and this definition of Effective Date
4 shall not be met, unless and until the Effective Date of the Missouri Settlement Agreement, entered into
5 by the parties in the action entitled *Gutzler v. General Motors*, Case No. 03CV208786 (Jackson
6 County, Missouri). In the event that the Missouri Settlement Agreement, entered into by the parties in
7 the action entitled *Gutzler v. General Motors*, Case No. 03CV208786 (Jackson County, Missouri), is
8 not given final approval by the court in that action, or is reversed or modified on appeal, this Settlement
9 shall not become Effective and General Motors shall have the option and right to rescind this
10 Settlement at its sole discretion by filing with the Court written notice of such election, with proof of
11 service on Co-Lead Counsel. Notwithstanding the above, and for the sole purpose of avoiding
12 unnecessary delay in Class Members' receipt of settlement benefits, in the event that an appeal from the
13 Judgment is filed, and such appeal (a) is an appeal only of the portion of the Judgment awarding i) an
14 amount up to \$140,000 in incentive payments to Representative Plaintiffs, (ii) attorneys' fees in an
15 amount not to exceed \$16.5 million and/or (iii) documented costs in an amount not to exceed \$1.55
16 million, and (b) could not result in the reversal and/or modification of the Judgment (including the
17 release provisions contained in paragraphs 3.14 through 3.18), then GM and Co-Lead Counsel may,
18 acting in good faith and upon mutual agreement, agree that the settlement is otherwise Effective and
19 that implementation of the settlement, including distribution of the settlement benefits, should proceed.

20 1.19. "Engine Group A Vehicle" means any 1995 through 2003 model year vehicle with a 3.1-
21 liter V6 or 3.4-liter V6 engine that was factory-equipped with Dex-Cool coolant and a nylon/silicone
22 lower intake manifold gasket. Excluded are all 2003 model year vehicles manufactured after April 9,
23 2003.

24 1.20. "Engine Group A Repair" means any lower intake manifold gasket replacement made on
25 an Engine Group A Vehicle within the earlier of 7 years or 150,000 miles of the Date of Initial Vehicle
26 Delivery.

27 1.21. "Engine Group B Vehicle" means any 1995 through 2004 model year vehicle with a 3.8-
28 liter V6 engine (RPO L36) that was factory-equipped with Dex-Cool coolant.

1 1.22. "Engine Group B Repair" means any engine sealability repair made on an Engine Group
2 B Vehicle within the earlier of 7 years or 150,000 miles of the Date of Initial Vehicle Delivery. Engine
3 sealability repairs with respect to an Engine Group B Repair include but are not limited to replacements
4 of a throttle body gasket, upper intake manifold gasket, lower intake manifold gasket, or intake
5 manifold.

6 1.23. "Engine Group C Vehicle" means any 1995 through 2000 model year S/T light truck or
7 sport utility vehicle with a 4.3-liter V6 engine that was factory-equipped with Dex-Cool coolant.

8 1.24. "Engine Group C Repair" means any Sludge-related repair made on an Engine Group C
9 Vehicle within the earlier of 7 years or 150,000 miles of the Date of Initial Vehicle Delivery. Sludge-
10 related repairs are repairs that are caused by cooling system Sludge and may include but are not limited
11 to cooling system flushes, heater core repairs, water pump repairs, and radiator cap replacements to the
12 extent that they were the result of cooling system Sludge.

13 1.25. "Judgment" means the judgment to be entered by the Court pursuant to this Settlement,
14 substantially in the form attached hereto as Exhibit C (but which may be modified or amended as
15 necessary before entry in order to effectuate the terms of this Agreement), which shall include, among
16 other things, final approval of the Settlement, dismissal of the *Sadowski* action with prejudice and
17 approval and entry of the provisions contained in Section 3.C, Release of Claims, below (i.e.
18 paragraphs 3.14 through 3.18).

19 1.26. "Notice Order" means an order substantially in the form of Exhibit B hereto, providing
20 for, among other things, provisional certification of the Class for settlement purposes only; preliminary
21 approval of the Settlement; dissemination of notice to the Class according to the notice plan attached;
22 and setting of the Fairness Hearing.

23 1.27. "Parties" means the Representative Plaintiffs and Defendant GM.

24 1.28. "Proof of Expenditure" means contemporaneous documentary proof of an out-of-pocket
25 expenditure by a Class Member on a Covered Repair to the extent not fully reimbursed under a new
26 vehicle warranty or any extended warranty or goodwill adjustment. In the case of an Engine Group A
27 Repair, Proof of Expenditure must document that the repair was made due to a failed intake manifold
28 gasket (and was not associated with a larger repair unrelated to a failed lower intake manifold gasket).

1 In the case of an Engine Group B Repair, Proof of Expenditure must document that the repair was made
2 due to an engine coolant sealability repair (including but not limited to throttle body gasket, upper
3 intake manifold gasket, lower intake manifold gasket, or intake manifold) (and was not associated with
4 a larger repair unrelated to a failed throttle body gasket, upper intake manifold gasket, lower intake
5 manifold gasket, intake manifold, or other engine sealability issue). In the case of an Engine Group C
6 Repair, Proof of Expenditure must document that the repair was made due to diagnosed Sludge. An
7 acceptable form of proof may include any written statement based on personal knowledge by the person
8 or business that performed the repair, such as a receipt. In the event that contemporaneous
9 documentary proof (i.e. an actual repair invoice or other contemporaneous documentary proof of the
10 repair) is not available, then a Claimant may satisfy the proof of expenditure requirement by submitting
11 (i) a written statement based on personal knowledge from the person or business who made the repair
12 that a copy of the actual repair invoice or other contemporaneous documentary proof of the repair is not
13 available and that the repair qualified as an Engine Group A Repair, Engine Group B Repair, or Engine
14 Group C repair as described above, and (ii) proof of payment of the repair. If a Claimant is unable to
15 provide the requisite Proof of Expenditure described above, the Claimant may submit the best available
16 written statement or other documents that the Claimant believes demonstrates a Proof of Expenditure,
17 and the Claims Administrator and General Motors, in the exercise of their joint, reasonable discretion,
18 may under subparagraph 3.6, after review of all such Claims, approve the Claim.

19 1.29. "Proof of Internal Leak Repair Expense" means Proof of Expenditure as defined in
20 subparagraph 1.26 above where the expenditure was (i) over \$1,500 and (ii) due to diagnosed internal
21 coolant leak. For purposes of this Settlement Agreement, an internal coolant leak means a diagnosed
22 coolant leak into the vehicle's internal components, as opposed to an external leak where coolant leaks
23 only out of the vehicle.

24 1.30. "Proof of Ownership" means documentary proof that, at the time a Covered Repair was
25 performed, the Claimant owned or leased the vehicle on which the Covered Repair was performed. An
26 acceptable form of proof may include a copy of a vehicle registration card, proof of insurance coverage,
27 title certificate, bill of sale, or lease agreement.
28

1 1.31. "Repair Expense" means the actual out-of-pocket expense incurred by the Claimant Class
2 Member for the Covered Repair itself.

3 1.32. "Representative Plaintiffs" means the named plaintiffs in the Actions, including all cases
4 consolidated as part of MDL No. 1562 and all named plaintiffs in the Second Amended Consolidated
5 Class Action Complaint filed in MDL No. 1562, and the named plaintiffs in the Amico/Bertino
6 Actions, excluding Mark Glover, Jason Bertino and Donald Hemans.

7 1.33. "Sludge" means a rust-like material that forms in the vehicle cooling system related to
8 Dex-Cool.

9 **2. RECITALS**

10 2.1. The Actions and the Amico/Bertino Actions that are the subject of this Settlement allege
11 that, among other things, the Dex-Cool engine coolant installed in certain GM vehicles fails to protect
12 the vehicles' engine and cooling system, and in fact causes damage to the engine and cooling system
13 and that certain engine components, including certain gaskets, were defective.

14 2.2. GM denies all allegations of wrongdoing asserted in the Actions and in the
15 Amico/Bertino Actions and denies liability under any cause of action asserted therein. Specifically,
16 among other things, GM denies the alleged defects, including the alleged defects in Dex-Cool coolant
17 as well as the allegations that certain engine components, including certain gaskets, were defective.

18 2.3. The Parties recognize that the outcome of the Actions and the Amico/Bertino Actions are
19 uncertain and that pursuing the Actions and the Amico/Bertino Actions to litigated judgments would
20 entail substantial cost, risk, and delay.

21 2.4. The Representative Plaintiffs and their counsel have conducted an investigation and
22 evaluation of the factual and legal issues raised by the claims asserted in the Actions and believe that, in
23 light of the cost, risk, and delay of continued litigation balanced against the benefits of the settlement
24 set forth in this Agreement, that such settlement is in the best interests of, and is fair, reasonable, and
25 adequate for the Class as a whole.

26 2.5. Through this Settlement, the Parties desire to compromise and settle all issues and claims
27 that have been or could have been brought in the Actions by or on behalf of members of the Class.
28

1 2.6. The Parties agree to undertake all reasonable efforts, including all steps and efforts that
2 may become necessary by order of the Court, to effectuate the terms and purposes of this Agreement, to
3 secure the Court's approval of it, and to oppose any objections to and appeals from any order of final
4 approval.

5 **3. SETTLEMENT CONSIDERATION**

6 **A. Claims Reimbursements**

7 3.1. All Class Members who submit a proper Claim Statement, Proof of Expenditure, and
8 Proof of Ownership will be eligible to receive a cash payment from the Claims Administrator according
9 to the following payment schedule (unless the Class Member is eligible to, and opts to, receive a cash
10 payment pursuant to subparagraph 3.2):

11 (a) For Class Members who incurred a Repair Expense within five years of the Date of
12 Initial Vehicle Delivery, an amount equal to the Repair Expense, up to a maximum of
13 \$400.

14 (b) For Class Members who incurred a Repair Expense between the fifth and sixth year
15 of the Date of Initial Vehicle Delivery, an amount equal to the Repair Expense, up to
16 a maximum of \$100.

17 (c) For Class Members who incurred a Repair Expense between the sixth and seventh
18 year of the Date of Initial Vehicle Delivery, an amount equal to the Repair Expense,
19 up to a maximum of \$50.

20 3.2. Any Class Member who is eligible to receive cash payment under subparagraph 3.1(a)
21 may opt to instead receive 40% of the Repair Expense, up to a maximum of \$800, if the Class Member
22 submits Proof of Internal Leak Repair Expense showing a repair over \$1,500 due to a diagnosed
23 internal coolant leak.

24 3.3. If a Class Member incurred multiple Repair Expenses, the Class Member may submit
25 multiple Claims, however, each Claim must be supported by a separate Claim Statement, Proof of
26 Expenditure, Proof of Ownership, and in the case of a Claim under subparagraph 3.2, Proof of Internal
27 Leak Repair Expense.

1 3.4. Claims may not be assigned or transferred and must be made and signed by the Class
2 Member who incurred the Repair Expense.

3 3.5. The Claims Administrator has the right, if it reasonably suspects a potentially invalid
4 Claim or fraud, to request additional documentation. General Motors has the right to perform a review
5 of Claims and, in the event that GM reasonably suspects a potentially invalid Claim or fraud, to request
6 additional documentation before the Claim is approved and paid. Co-Lead Counsel shall monitor the
7 claims review and approval process to ensure that valid claims are timely paid.

8 3.6. After giving Claimants a reasonable opportunity of at least 45 days to cure deficient
9 Claims, the Claims Administrator shall determine the sufficiency or deficiency of all Claims. GM and
10 Co-Lead Counsel will work with the Claims Administrator to develop a process by which the
11 sufficiency or deficiency of Claims are determined, including GM's ability to challenge claims that it
12 suspects are invalid. The Claims Administrator's determination of the sufficiency or deficiency of a
13 Claim is final and not subject to appeal by any party.

14 3.7. Within 60 days after the Class Administrator approves a Claim as sufficient, the Claims
15 Administrator shall mail a check, issued to the Claimant and payable to the Claimant, in the amount
16 provided by subparagraphs 3.1 and 3.2. All such checks provided to eligible Claimants shall contain, or
17 be accompanied by, a release providing and explaining to the Claimant that, by accepting the payment
18 and cashing the check, the Claimant releases General Motors from any and all claims related to the
19 vehicle for which the Claim is submitted, to the extent that such claims relate to Dex-Cool, engine
20 gaskets or engine sealability issues.

21 3.8. No Claimant shall have any claim or cause of action against the Representative Plaintiffs,
22 Class Counsel, Amico/Bertino Counsel, the Claims Administrator, GM, or any Released Persons based
23 on distributions made substantially in accordance with this Agreement and any further orders of the
24 Court.

25 **B. Costs and Fees**

26 3.9. GM will pay all costs and fees of the Claims Administrator, including amounts
27 distributed by the Claims Administrator to Class Members pursuant to subparagraphs 3.1, 3.2, and 3.7.
28

1 3.10. GM will pay all costs associated with disseminating notice of the Settlement to the Class,
2 the form of such notice to be agreed upon by GM and Co-Lead Counsel and provided in the Notice
3 Order issued by the Court.

4 3.11. GM will pay to Representative Plaintiffs such incentive payments as may be awarded by
5 the Court upon Co-Lead Counsel's request, not to exceed \$140,000 in total payments to all
6 Representative Plaintiffs. In no event shall GM be obligated to pay incentive payments in excess of
7 \$200,000 in the aggregate under this Settlement and the Missouri Dex-Cool (Gutzler) Settlement.

8 3.12. GM will pay Class Counsel and Amico/Bertino Counsel attorneys' fees in an amount to
9 be approved by the Court, not to exceed \$14,000,000 for Class Counsel and \$2,500,000 for
10 Amico/Bertino Counsel. In no event shall GM be obligated to pay for any attorneys' fees in excess of
11 \$21,250,000 to Class Counsel and \$2,500,000 to Amico/Bertino Counsel under this Settlement and the
12 Missouri Dex-Cool (Gutzler) Settlement, including any attorneys' fees paid to Amico/Bertino Counsel
13 in connection with the settlement and dismissal of the Amico and Bertino actions.

14 3.13. GM will pay Class Counsel documented costs in an amount approved by the Court, not to
15 exceed \$1,250,000, and costs in the amount of \$300,000 to Amico/Bertino Counsel. In no event shall
16 GM be obligated to pay any payment of costs in excess of \$2,500,000 to Class Counsel and \$300,000 to
17 Amico/Bertino Counsel under this Settlement and the Missouri Dex-Cool (Gutzler) Settlement,
18 including any costs paid to Amico/Bertino Counsel in connection with the settlement and dismissal of
19 the Amico and Bertino actions.

20 **C. Release of Claims**

21 3.14. In consideration of the benefits described above, the Representatives Plaintiffs promise,
22 covenant and agree, and each Class Member and the Class shall be deemed to have promised,
23 covenanted and agreed, that, upon the Effective Date of Settlement, the Representative Plaintiffs and
24 the Class Members, including their affiliates, subsidiaries, associates, general or limited partners or
25 partnerships, predecessors, successors, and/or assigns, including, without limitation, any of their
26 respective present or former officers, directors, trustees, employees, agents, attorneys, representatives
27 and/or shareholders, affiliates, associates, general or limited partners or partnerships, heirs, executors,
28 administrators, predecessors, successors, assigns or insurers, and anyone acting on their behalf, by

1 operation of the Judgment, shall have hereby released, waived and discharged GM, including its
2 subsidiaries, affiliates, associates, general or limited partners or partnerships, predecessors, successors,
3 and/or assigns, including, without limitation, any of their respective present or former officers,
4 directors, trustees, employees, agents, attorneys, representatives and shareholders, affiliates, associates,
5 general or limited partners or partnerships, heirs, executors, administrators, predecessors, successors,
6 assigns or insurers and anyone acting on their behalf, individually and collectively, from liability for
7 any and all claims, demands, debts, rights, causes of action or liabilities whatsoever, including known
8 and unknown claims, now existing or hereafter arising, in law, equity or otherwise, arising under state
9 statutory or common law federal statutory or common law, or foreign statutory or common law, to the
10 fullest extent permitted by law, including, but not limited to, federal or state antitrust claims, RICO
11 claims, claims arising under state consumer protection, consumer fraud, deceptive trade practices
12 statutes, common law breach of contract claims, statutory or common law fraud or misrepresentation
13 claims, breach of fiduciary duty claims or unjust enrichment claims and whether possessed or asserted
14 directly, indirectly, derivatively, representatively or in any other capacity, and whether or not such
15 claims were or could have been raised or asserted in the Actions or the Amico/Bertino Actions, to the
16 extent any such claims are based upon, arise out of or relate to, in whole or in part, any of the
17 allegations, acts, omissions, transactions, events, conduct, or matters arising from or related to any
18 Repair Expense. Claims for personal injury, and claims for lower intake manifold gasket replacements
19 in 4.3-liter V6 engines for Class Members who have not submitted a Claim and received a payment
20 under the settlement, are not released. The Parties recognize and agree that this is a general release.
21 Representative Plaintiffs and the Class Members expressly waive and relinquish, and shall be deemed
22 to have waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and
23 benefits of California Civil Code section 1542 and the provisions, rights, and benefits conferred by any
24 law of the United States, any law of any State or the District of Columbia, or any principle of common
25 law that is similar, comparable, or equivalent to California Civil Code section 1542, which states, “A
26 general release does not extend to claims which the creditor does not know or suspect to exist in his or
27 her favor at the time of executing the release, which if known by him or her must have materially
28 affected his or her settlement with the debtor.”

1 3.15. Upon the Effective Date of Settlement, for the consideration provided for herein and by
2 operation of the Final Order and Judgment, the Representative Plaintiffs shall have, and each Class
3 Member and the Class shall be deemed to have, covenanted and agreed that he or she shall not, at any
4 time, institute, cause to be instituted, assist in instituting or permit to be instituted on his or her behalf
5 any proceeding in any state or federal court, in or before any administrative agency, or any other
6 proceeding or otherwise allege or assert any of the claims released against the Released Persons,
7 individually or collectively, in subparagraph 3.14 above.

8 3.16. Upon the Effective Date of the Settlement, GM and its past or present officers, directors,
9 employees, agents, attorneys, predecessors, successors, affiliates, subsidiaries, divisions, and assigns,
10 shall be deemed to have, and by operation of the Judgment shall have, released, waived, and discharged
11 any and all claims or causes of action of any nature whatsoever, including but not limited to any claim
12 for violations of federal, state, or other law (whether in contract, tort, or otherwise, including statutory,
13 common law, property, and equitable claims), whether known or unknown, that have been or could
14 have been asserted against any Representative Plaintiff, counsel for any Representative Plaintiff, or any
15 Class Member, in the Actions or in any other complaint, action, or litigation in any other court or forum
16 arising from, based on, or related to the initiation, prosecution, or resolution of the Actions to the extent
17 any such claims are based upon, arise out of or relate to, in whole or in part, any of the allegations, acts,
18 omissions, transactions, events, conduct, or matters arising from or related to any Repair Expense. The
19 Parties recognize and agree that this is a general release, and shall have expressly waived and
20 relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of California
21 Civil Code section 1542 and the provisions, rights, and benefits conferred by any law of the United
22 States, any law of any State or the District of Columbia, or any principle of common law that is similar,
23 comparable, or equivalent to California Civil Code section 1542, which states, “A general release does
24 not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time
25 of executing the release, which if known by him or her must have materially affected his or her
26 settlement with the debtor.”

27 3.17. Upon the Effective Date of Settlement, for the consideration provided for herein and by
28 operation of the Judgment, GM and its past or present officers, directors, employees, agents, attorneys,

1 predecessors, successors, affiliates, subsidiaries, divisions, and assigns, shall be deemed to have, and by
2 operation of the Judgment shall have, covenanted and agreed that he, she or it shall not, at any time,
3 institute, cause to be instituted, assist in instituting or permit to be instituted on his, her or its behalf any
4 proceeding in any state or federal court, in or before any administrative agency, or any other proceeding
5 or otherwise allege or assert any of the claims released against the Representative Plaintiffs, Class
6 Counsel, and all Class Members, individually or collectively, in subparagraph 3.16 above.

7 3.18. The sole remedy for default of this Agreement by either of the Parties is an action for
8 breach of this Agreement. Following entry by the Court of a Judgment that substantially takes the form
9 of Exhibit C to this Agreement and completion of all obligations and undertakings set forth therein, no
10 default by any party shall affect the final dismissal of the Actions or the Amico/Bertino Actions with
11 prejudice, the discharge of any of GM, any Released Persons, Class Counsel, Amico/Bertino Counsel,
12 Representative Plaintiffs, or Class Members, either individually or collectively, or the releases and
13 covenants provided in connection with this Agreement and set forth in subparagraphs 3.14-3.17.

14 **4. DENIAL OF WRONGDOING OR LIABILITY**

15 4.1. This Agreement constitutes the resolution of disputed claims, is for settlement purposes
16 only, and shall not be used by any party, Class Counsel or Amico/Bertino Counsel for any other
17 purpose. GM expressly denies that it has violated any law, breached any agreement or obligation to the
18 Representative Plaintiffs or the Class, or engaged in any wrongdoing with respect to the Representative
19 Plaintiffs or the Class. GM denies that it is liable to the Representative Plaintiffs or to the Class for any
20 claims, causes of action, costs, expenses, attorneys' fees or damages of any kind relating to Repair
21 Expenses. GM denies that any of the claims were appropriate for maintenance as a class action through
22 trial. Neither this Agreement nor any actions undertaken by GM in satisfaction of this Agreement shall
23 constitute, or be construed as, an admission of any liability or wrongdoing, or recognition of the
24 validity of any allegation of fact or law made by the Representative Plaintiffs in the Actions, the
25 Amico/Bertino Actions, or in any other action or proceeding. Any orders related to class certification
26 entered in this action under this Agreement or otherwise shall not constitute, in the Actions, the
27 Amico/Bertino Actions, or any other proceeding, an admission by GM that the Representative
28 Plaintiffs' claims, or those of any alleged Class Member, are appropriate for class treatment or that any

1 requirement for class certification is otherwise satisfied in the Actions or the Amico/Bertino Actions.
2 By entering into this Agreement, GM in no way waives its right to challenge or contest, on any and all
3 grounds, any allegations that a class may be certified in the Actions or Amico/Bertino Actions or any
4 order regarding class certification that has been entered in the Actions or the Amico/Bertino Actions. If
5 this Agreement is terminated and becomes null and void, the class action aspects of the Agreement
6 shall have no further force and effect with respect to any Party and shall not be offered in evidence or
7 used in the Actions, the Amico/Bertino Actions, or any other proceeding. This Agreement, even when
8 Effective, shall not be offered or be admissible in evidence against GM or cited or referred to in any
9 action or proceeding, except in an action or proceeding brought to enforce its terms or by GM in
10 defense of any claims brought by the Representative Plaintiffs, the Class or by any Class Members.

11 **5. SETTLEMENT APPROVAL PROCESS**

12 5.1. The Parties will apply to the Court for entry of the proposed Notice Order and setting of a
13 hearing for the Court to consider (a) whether to make final its certification of the Class for purposes of
14 the Settlement but not for trial purposes; (b) whether to grant final approval of the Settlement as fair,
15 reasonable, and adequate for Class as a whole; (c) whether to grant Class Counsel's application for
16 attorneys' fees and costs and the Representative Plaintiffs' incentive award and, if so, in what amounts;
17 and (d) any related matters as appropriate ("Fairness Hearing").

18 5.2. Within five business days of the Court granting final approval of the Settlement, GM will
19 deposit \$24,200,000 into an interest-bearing bank account established at a bank of GM's choosing,
20 subject to the reasonable approval of Co-Lead Counsel. Within five business days after the
21 Settlement's Effective Date, and absent any appeal by an objector from an order awarding (i)
22 Representative Plaintiffs an amount up to \$140,000 in incentive payments (ii) attorneys' fees in an
23 amount not to exceed \$16.50 million for both (and all) Class Counsel and Amico/Bertino Counsel
24 and/or (iii) documented costs in an amount not to exceed \$1.55 million for both (and all) Class Counsel
25 and Amico/Bertino Counsel, that does not and could not result in the reversal and/or modification of the
26 Judgment (including the release provisions contained in paragraphs 3.14 through 3.18) GM will transfer
27 the total amount of the fee and cost award and any incentive payment award, including any interest
28 earned on the \$24,200,000 million deposit, from the account to a bank account as directed by Co-Lead

1 Counsel. In the event that any fee, cost, or incentive award is later distributed from the account
2 pursuant to the Missouri Settlement, any interest earned on such principal amounts shall be, at that
3 time, transferred to a bank account as jointly directed by Co-Lead Counsel in writing. In the event that
4 the Settlement does not become Effective, General Motors retains all right to the amount distributed in
5 the account and may withdraw and retain the full amount, including any interest earned.

6 5.3. Co-Lead Counsel will in good faith allocate the fee award among Class Counsel in a
7 manner which, in the judgment of Co-Lead Counsel, reflects their relative contributions to the Actions
8 and the Agreement. Amico/Bertino Counsel shall receive \$2,500,000 in attorneys' fees and \$300,000
9 in costs, which shall satisfy any claims for attorneys' fees and costs as between: (1) General Motors
10 and Amico/Bertino Counsel; and (2) Amico/Bertino Counsel and Class Counsel. Any disagreement
11 among Class Counsel or between Co-Lead Counsel and Amico/Bertino Counsel concerning the
12 distribution of the fee award shall be referred to a mediation process determined by Co-Lead Counsel
13 and, if necessary, to the Court for determination. Co-Lead Counsel will in good faith allocate the
14 incentive awards among the Representative Plaintiffs in a manner which, in the judgment of Co-Lead
15 Counsel, and as approved by the Court, reflects their relative contribution to the Actions and the
16 Agreement. Co-Lead Counsel, Class Counsel, Amico/Bertino Counsel and the Representative
17 Plaintiffs shall have no recourse to, nor any claims of any nature whatsoever against, GM in the event
18 of a disagreement as to the apportionment of any fee or incentive award.

19 5.4. GM and Co-Lead Counsel will work together with, among others, the Settlement
20 Administrator to disseminate notice to the Class in accordance with the Notice Order. No later than the
21 day the motion for final approval of the Settlement is to be filed under the Notice Order, the Settlement
22 Administrator or such other appropriate person or entity, among others, will file an affidavit or
23 declaration attesting that notice to the Class was disseminated in accordance with the Notice Order.

24 5.5. Class Members must submit their exclusion requests, objections and supporting papers,
25 and notices of intent to appear in accordance with the Notice Order and the notice to the Class
26 disseminated pursuant to the Notice Order.
27
28

1 5.6. If the number of exclusion requests exceed 10,000, GM shall have the option to rescind
2 this Settlement at its sole discretion by filing with the Court written notice of such election, with proof
3 of service on Co-Lead Counsel, no later than three days before the Fairness Hearing.

4 5.7. In accordance with the Notice Order or such other or further order of the Court, Co-Lead
5 Counsel will file a motion for final approval of the Settlement and an application for attorneys' fees and
6 costs and incentive awards for the Representative Plaintiffs, and the Parties will brief the motion and
7 application.

8 5.8. The Parties will appear at the Fairness Hearing and present their arguments in support of
9 final approval of the Settlement and entry of the proposed Judgment, and Co-Lead Counsel will present
10 their arguments in support of an award of attorneys' fees and costs and incentive awards for the
11 Representative Plaintiffs. GM agrees that the attorneys' fees, costs, and incentive awards, as set forth
12 in subparagraphs 3.11-3.13, are reasonable, and thus will not object to or oppose an award of attorneys'
13 fees and costs and incentive awards for the Representative Plaintiffs, provided the amounts sought do
14 not exceed that provided for by subparagraphs 3.11-3.13.

15 5.9. The Actions and the Amico/Bertino Actions shall be stayed until the Court grants or
16 denies final approval of the Settlement. After the Effective Date of Settlement, Co-Lead Counsel, on
17 behalf of all Class Counsel will, within thirty days, execute joint stipulations of dismissal, with
18 prejudice, of the remaining Actions and deliver such joint stipulations for dismissal with prejudice to
19 General Motors for filing in the remaining Actions. After the Effective Date of the Settlement,
20 Amico/Bertino Counsel will dismiss the Amico/Bertino Actions, as provided in Exhibit D, attached
21 hereto or any subsequent agreement entered into between GM and Amico/Bertino Counsel formalizing
22 the term sheet attached hereto.

23 5.10. This Agreement shall, if either GM or the Co-Lead Counsel elect, be null and void and
24 shall have no further force and effect with respect to any party in the Actions or the Amico/Bertino
25 Actions in the event that (i) preliminary and final approval of the settlement and of the settlement in
26 *Gutzler v. General Motors*, Case No. 03CV208786 (Jackson County Missouri), is not obtained, or if
27 such approval is reversed on appeal; (ii) the Effective Date of Settlement for this Settlement and the
28 settlement in *Gutzler v. General Motors*, Case No. 03CV208786 (Jackson County Missouri), does not

1 occur for any reason; (iii) entry of the Judgment described is reversed; (iv) the Judgment is substantially
2 modified by the Court, or on appeal, and GM or the Representative Plaintiffs do not agree with its
3 modification; or (v) the remaining Actions are not dismissed with prejudice after presentation of the
4 joint stipulations by General Motors as referenced in 5.9 above. In such event, this Agreement shall not
5 be offered in evidence or used in the Actions, the Amico/Bertino Actions, or in any other action for any
6 purpose including, but not limited to, the existence, certification or maintenance of any purported class
7 or in connection with a trial or appeal of this matter or any other matter. In such event, this Agreement
8 and all negotiations, proceedings, documents prepared and statements made in connection with this
9 Agreement shall be without prejudice to the Parties and shall not be admissible into evidence, and shall
10 not be deemed or construed to be an admission or confession by any of the Parties of any fact, matter or
11 proposition of law, and shall not be used in any manner for any purpose, and all Parties to the Actions
12 and the Amico/Bertino Actions shall stand in the same position as if this Agreement had not been
13 negotiated, made or filed with the Court.

14 **6. MISCELLANEOUS PROVISIONS**

15 6.1. The Representative Plaintiffs and GM expressly agree that the terms of this Agreement
16 and all provisions hereof, including all representations, promises, agreements, covenants, and
17 warranties, are contractual and not a mere recital and shall survive the execution of this Agreement and
18 entry of the Judgment and shall continue in full force and effect thereunder. All exhibits to this
19 Agreement are material and integral parts hereof and are fully incorporated herein by this reference.

20 6.2. This Agreement represents the entire agreement and understanding among the Parties and
21 supersedes all prior proposals, negotiations, agreements, and understandings relating to the subject
22 matter of this Agreement, the sole exception being the term sheet attached hereto as Exhibit D and any
23 agreement entered into between Amico/Bertino Counsel and GM to effectuate that term sheet. The
24 Parties acknowledge, stipulate, and agree that no covenant, obligation, condition, representation,
25 warranty, inducement, negotiation, or understanding concerning any part or all of the subject matter of
26 this Agreement has been made or relied on except as expressly set forth in this Agreement. No
27 modification or waiver of any provisions of this Agreement shall be effective unless made in writing
28 and signed by or on behalf of the person against whom enforcement of the Agreement is sought.

1 6.3. This Agreement may be executed in one or more counterparts, each of which shall be
2 deemed an original as against any Party who has signed it, and all of which shall be deemed a single
3 agreement.

4 6.4. The Parties have negotiated all of the terms and conditions of this Agreement at arm's
5 length. None of the Parties or their respective counsel will be deemed the drafter of this Agreement or
6 its exhibits for purposes of construing the provisions thereof. The language in all parts of this
7 Agreement and its exhibits will be interpreted according to its fair meaning, and will not be interpreted
8 for or against any Party as the drafter thereof.

9 6.5. In accordance with California Rule of Court 3.769(h), the Court will retain continuing
10 and exclusive jurisdiction over the Parties and all Class Members for purposes of implementing and
11 enforcing this Agreement and the Settlement.

12 6.6. The Parties hereto warrant and represent that no promise or inducement has been offered
13 or made for the release and covenants in subparagraphs 3.14-3.17 except as herein set forth, that the
14 releases and covenants are executed without reliance on any statements or any representations not
15 contained herein, and the release and covenants reflects the entire agreement among the Parties with
16 respect to the terms of the releases and covenants, except as provided above with respect to the attached
17 term sheet and any agreement entered into to further memorialize the term sheet.

18 6.7. The Parties acknowledge and agree and specifically warrant to each other that they have
19 fully read this Agreement and the releases and covenants contained in subparagraphs 3.14-3.17,
20 received independent legal advice with respect to the advisability of entering into this Agreement and
21 those releases and covenants, and the legal effect of this Agreements and the releases and covenants,
22 and fully understand their effect.

23 6.8. GM and Co-Lead Counsel may agree, on behalf of the Parties and subject to approval of
24 the Court where required, to reasonable extensions of time to carry out the provisions of this
25 Agreement. For purposes of such extensions, agreement by Co-Lead Counsel is the agreement of all
26 Parties.

1 6.9. This Agreement will be binding upon and inure to the Parties' successors and assigns.
2 This Agreement is not intended to create any third party beneficiaries other than persons (including
3 Class Members) for which a direct benefit is specifically provided for hereunder.

4 6.10. In the event that the release and covenants contained in subparagraphs 3.14-3.15 of this
5 Agreement shall for any reason be held in whole or material part to be invalid, illegal, or unenforceable
6 in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this
7 Agreement if GM elects in writing to Co-Lead Counsel to proceed as if such invalid, illegal, or
8 unenforceable provision had never been included in this Agreement. If no such election is made, then
9 the Agreement shall be null and void. In the event that the release and covenants contained in
10 subparagraphs 3.16-3.17 of this Agreement shall for any reason be held in whole or material part to be
11 invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not
12 affect any other provision of this Agreement if the Representative Plaintiffs elect, either individually or
13 collectively, in writing to proceed as if such invalid, illegal, or unenforceable provision had never been
14 included in this Agreement. If no such election is made, then the Agreement shall be null and void. If
15 one or more of the other material provisions contained in this Agreement is held to be invalid, illegal, or
16 unenforceable, such invalidity, illegality, or unenforceability will not affect other provisions if GM and
17 the Representative Plaintiffs, on behalf of the Class, both elect to proceed as if such invalid, illegal, or
18 unenforceable provision were not contained in this Agreement.

19 6.11. No consideration or amount or sum paid, credited, offered, or expended by GM in its
20 performance of this Agreement constitutes a penalty, fine, punitive damages or other form of
21 assessment for any alleged claim or offense.

22 6.12. For purposes of this Agreement, the Parties and all counsel agree that all orders and
23 agreements regarding the confidentiality of documents and information ("Protective Orders") remain in
24 effect and all Parties and counsel remain bound to comply with the provisions of those Protective
25 Orders. Within thirty days of the Effective Date of Settlement, each of the Parties agrees to use its best
26 efforts to return all documents produced in these Actions or belonging to Defendants and all copies
27 thereof, and each of the Parties' counsel will certify in writing that it used its best efforts to return all
28 documents have been returned to the producing party.

1 6.13. GM and Co-Lead Counsel agree to use their best efforts to issue a joint, written press
2 release within 48 hours of formal execution of this Settlement Agreement.

3 6.14. The Parties hereto understand, acknowledge and agree that they and their counsel (i) have
4 each performed an independent investigation of the allegations of fact and law made in connection with
5 the Actions and the Amico/Bertino Actions, and (ii) that they each may hereafter discover facts in
6 addition to, or different from, those that they now know or believe to be true with respect to the subject
7 matter of this Agreement. Nevertheless, it is the Parties' intention to resolve their disputes pursuant to
8 the terms of this Agreement and, thus, in furtherance of their intentions, the Agreement shall remain in
9 full force and effect notwithstanding the discovery of any additional facts or law, or changes in law, and
10 this Agreement shall not be subject to rescission or modification by reason of any change or difference
11 in facts or law.

12 6.15. This Agreement shall be governed and construed in accordance with the internal laws of
13 the State of California, without regard to any conflict of law provision that could require the application
14 of the law of any other jurisdiction.

15 6.16. Whenever under the terms of this Agreement, a Party is required to provide written notice
16 to the other, such notice must be directed to the individual at the address specified below, unless that
17 individual or the individual's successor gives notice to the other Party in writing of another individual
18 or address to whom such notice should be directed:

19 Written notice to the Representative Plaintiffs must be given to:

20 Eric H. Gibbs
21 Girard Gibbs LLP
22 601 California Street, 14th Floor
23 San Francisco, California 94108

24 P. John Brady
25 Shughart Thomson & Kilroy, P.C.
26 Twelve Wyandotte Plaza
27 120 West 12th Street
28 Kansas City, MO 64105

 Written notice to GM must be given to:

 Robert B. Ellis, P.C.
 Kirkland & Ellis LLP
 200 East Randolph Drive
 Chicago, Illinois 60601

1 IN WITNESS HEREOF, the Parties have caused this Agreement to be executed by their duly
2 authorized attorneys below.

3
4
5 _____
6 Eric H. Gibbs
7 Girard Gibbs LLP
8 601 California Street, 14th Floor
9 San Francisco, California 94108

Robert B. Ellis, P.C.
Kirkland & Ellis LLP
200 East Randolph Drive
Chicago, Illinois 60601

Attorneys for GM

10 _____
11 P. John Brady
12 Shughart Thomson & Kilroy, P.C.
13 Twelve Wyandotte Plaza
14 120 West 12th Street
15 Kansas City, MO 64105

Co-Lead Counsel

Michael F. Ram
Levy, Ram & Olson LLP
639 Front Street
Fourth Floor
San Francisco, CA 94111

Attorneys for Amico/Bertino Actions